



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

ALBERT B. CHANDLER III
ATTORNEY GENERAL

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August 11, 2003

Mr. Thomas M. Dorman
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602

RE: Case No. 2003-00030 and 2000-00079, An Investigation of East Kentucky Power Cooperative's Need for the Gilbert Unit and the Kentucky Pioneer Energy Purchase Power Agreement

Dear Mr. Dorman,

Enclosed herewith, to be filed in the above-styled action, are the original and 10 copies of the testimony of the Attorney General's witness, David H. Brown Kinloch. All parties listed below have been served with a true copy of this testimony today by mail, postage prepaid.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth E. Blackford".

Elizabeth E. Blackford
Assistant Attorney General
Capital Center Drive, Suite 200
Frankfort, KY 40601
(502) 696-5453

Enclosure: (1)

cc: Roy Palk
Charlie Lile
Michael Kurtz
Kendrick Riggs and Allyson Sturgeon
Dwight Lockwood



COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

CASE NO. 2003-00030
CASE NO. 2000-00079

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PUBLIC SERVICE
COMMISSION

AN INVESTIGATION OF
EAST KENTUCKY POWER COOPERATIVE'S
NEED FOR THE GILBERT UNIT AND
THE KENTUCKY PIONEER ENERGY
PURCHASE POWER AGREEMENT

TESTIMONY OF
DAVID H. BROWN KINLOCH

On Behalf of
THE OFFICE OF THE ATTORNEY GENERAL
FOR THE COMMONWEALTH OF KENTUCKY

AUGUST 2003

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

* * * * *

In the Matter of:

AN INVESTIGATION OF EAST KENTUCKY)	
POWER COOPERATIVE, INC.'S NEED)	
FOR THE GILBERT UNIT AND THE)	CASE NO. 2003-00030
KENTUCKY PIONEER ENERGY, LLC)	
PURCHASE POWER AGREEMENT)	
THE APPLICATION OF EAST KENTUCKY)	
POWER COOPERATIVE, INC. FOR)	CASE NO. 2000-00079
APPROVAL TO PURCHASE POWER)	
AGREEMENT)	

TESTIMONY OF DAVID H. BROWN KINLOCH

Q1: PLEASE STATE YOUR NAME AND ADDRESS.

A1: My name is David H. Brown Kinloch and my business address is Soft Energy
Associates, 414 S. Wenzel Street, Louisville, KY 40204.

Q2: FOR WHOM HAVE YOU PREPARED TESTIMONY?

A2: I have prepared this testimony for the Office of the Attorney General for the
Commonwealth of Kentucky.

1 Q3: PLEASE STATE YOUR EDUCATIONAL AND PROFESSIONAL
2 BACKGROUND.

3 A3: I have received two master's degrees from Rensselaer Polytechnic Institute (RPI)
4 in Troy, New York. I also received two undergraduate degrees from the same
5 school. My master's degrees are a Master of Engineering in Mechanical
6 Engineering and a Master of Science in Science, Technology and Values,
7 received in 1979 and 1981 respectively. My undergraduate degrees are in
8 Mechanical Engineering and Philosophy. Much of my master's work included
9 preparing Electric Generation Planning studies for the Center for Technology
10 Assessment at Rensselaer.

11
12 Q4: WHAT AREA OF YOUR BACKGROUND ARE YOU DRAWING UPON TO
13 PREPARE THIS TESTIMONY?

14 A4: I have prepared this testimony relying on my expertise in three areas: utility
15 planning, implementation of energy conservation programs, and my knowledge of
16 the regulated utility industry.

17
18 Q5: PLEASE ELABORATE ON YOUR UTILITY PLANNING BACKGROUND.

19 A5: During my senior year and in my master's program in Mechanical Engineering at
20 Rensselaer Polytech, I was a Research Assistant for the Center for Technology
21 Assessment, which is a part of the RPI Nuclear Engineering Department. Our
22 interdisciplinary group did electric generation planning studies for organizations,
23 including the New York State Energy Research and Development Authority

(NYSERDA) and the New York State Energy Office. I was personally in charge of modeling the impacts of new technologies such as solar heating and wind turbines upon the New York Power Pool grid. From this work I published two technical papers with IEEE Power Generation Division, and was a contributing author on two others. A modeling technique I developed and published for wind turbines has since been used and credited to me in federal windpower studies. I also did work on New York State's first Energy Masterplan, one of the first comprehensive long-term planning studies in the nation.

Q6: PLEASE DETAIL YOUR BACKGROUND IN ENERGY CONSERVATION.

A6: In 1981, I developed and ran an Energy Conservation Program in the Crown Heights neighborhood in Brooklyn, New York under a Federal energy grant from VISTA. In 1982, I helped run a supervisor-training program for a grass-roots energy conservation program in the Germantown neighborhood of Philadelphia. In 1984, 1985 and 1986, I was a supervisor for Project Warm in Louisville as part of the City of Louisville's Summer Youth Employment Program. I have also designed and supervised workshops to train people in the construction of solar greenhouses and passive solar domestic hot water heating systems. I am also presently serving on the Board of Directors of the Affordable Energy Corporation. This non-profit organization administers a utility assistance program for low-income Louisville Gas and Electric customers.

1 Q7: HAVE YOU PREVIOUSLY PRESENTED TESTIMONY BEFORE THIS
2 COMMISSION?

3 A7: Yes, I testified in the following rate cases: Louisville Gas & Electric Co. Case No.
4 2000-080, Case No. 90-158, Case No. 10064, and Case No. 9824; Kentucky
5 Power Co. Case No. 91-066; Union Light Heat and Power Co. Case No. 92-346
6 and Case No. 91-370; Big Rivers Electric Corp. Case No. 9613 and Case No. 97-
7 204; Delta Natural Gas Co. Case No. 97-066; Western Kentucky Gas Co. 95-010;
8 East Kentucky Power Cooperative Case No. 94-336; Clark RECC Case No. 92-
9 219; Jackson Purchase ECC Case No. 97-224; Meade County RECC Case No.
10 97-209; Green River EC Case No. 97-219, Henderson Union ECC Case No. 97-
11 220, and Licking Valley RECC Case No. 98-321. I also presented testimony in
12 cases involving each of East Kentucky Power's Cooperatives in the pass-through
13 of rate reductions associated with Case No. 94-336. I also testified in the
14 Commission's reviews of LG&E's Trimble County power plant, Case No. 9934
15 and Case No. 9242, and the rate impact of the 25% disallowance of that project,
16 Case No. 10320. In addition, I presented testimony in the Certificate of
17 Convenience and Necessity cases for Kentucky Utilities, Case No. 91-115, LG&E
18 and KU, Case No. 2002-00029, and East Kentucky Power, Case No. 92-112, Case
19 No. 2000-056, and Case No. 2001-053 . I have also testified in Fuel Adjustment
20 Clause cases involving Louisville Gas and Electric, Case No. 96-524, and
21 Kentucky Utilities, Case No. 96-523; and in Environmental Surcharge cases
22 involving Kentucky Power, Case No. 96-489; Kentucky Utilities, Case No. 93-
23 465; and Louisville Gas and Electric, Case No. 94-332. Other cases in which I

1 presented testimony include the Kentucky Utilities' Coal Litigation Refund case,
2 Case No. 93-113; the Big Rivers' sale of peaking capacity to Hoosier Energy
3 case, Case No. 93-163; the Joint Application case with LG&E to establish
4 Demand Side Management programs, Case No. 93-150; and the Louisville Gas
5 and Electric and Kentucky Utilities merger case, Case No. 97-300, the LG&E
6 Energy and PowerGen merger case, Case No. 2000-095; and a Union Light, Heat
7 and Power refund case, Case No. 2000-426.

8
9 Q8: WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS CASE?

10 A8: In this case, the Commission is investigating whether approval of the East
11 Kentucky Power Cooperative (EKPC) power purchase agreement with Kentucky
12 Pioneer Energy (KPE) is still valid, since the findings in the order that
13 underpinned the approval are no longer valid. In my testimony, I will outline for
14 the Commission changes that have taken place since the 2000 approval that
15 should have a bearing on the Commission's decision in this case.

16
17 Q9: WHAT CHANGES HAVE TAKEN PLACE IN THE LAST THREE YEARS
18 SINCE THE COMMISSION APPROVED THE CONTRACT BETWEEN EKPC
19 AND KPE?

20
21 A9: The KPE project that looked to be on a fast track in 2000 has stalled. The project
22 failed to reach financial closure by the dates in the contract, and the date for the
23 project to be on-line cannot be met. In response, EKPC is now constructing the

1 250 MW coal-fired Gilbert plant to fill in the gap left by the failure of the KPE
2 plant to meet its timelines. The Commission approved the KPE power purchase
3 contract based on a need that is now being satisfied by the Gilbert plant.

4 The Commission finds itself in a much different position today than it was
5 in three years ago. In 2000, EKPC had a need for baseload power and the KPE
6 project was the lowest cost option to meet that need. At that time, the KPE
7 project was a part of EKPC's generation plan. EKPC was able to present the
8 Commission with a finished contract that could be reviewed and approved. A
9 contract for sale of 100 MW of the KPE output to Wabash Valley for 10 years
10 was also given to the Commission.

11 But today, the situation is quite different. The Gilbert plant has filled
12 EKPC's baseload needs through 2011. In fact, the KPE plant is not even included
13 in EKPC's 2003 Integrated Resource Plan. Though Mr. Brown has testified that
14 the contract between EKPC and KPE is still in effect, sections of it would have to
15 be renegotiated to make it of use. While it is clear that dates would need to be
16 changed, there are also other issues that EKPC may address during renegotiations.
17 For example, in response to the Attorney General's Information Request, Item 1b,
18 EKPC stated that "performance security" would be an issue in any future
19 negotiations with EKPC. In addition, the sales contract with Wabash Valley is set
20 to automatically terminate due to KPE failure to bring the project on line by
21 March 31, 2005.

22 In 2000, EKPC presented the Commission with the demonstrated need for
23 the KPE power, and with final negotiated contracts with both KPE and Wabash

1 Valley. Today, EKPC can only demonstrate a need for baseload capacity in 2011,
2 with the possibility of displacing some future combustion turbines if the KPE
3 project becomes viable before resources are committed to the combustion turbine
4 projects. The best EKPC can present the Commission with is the old 2000
5 contract with KPE, which must be renegotiated. It is unclear at this time what
6 contractual changes will be required by EKPC and by KPE. Likewise, the best
7 EKPC can present the Commission with, with respect to the associated Wabash
8 sale, is a phone conversation with a Wabash employee that said they were
9 probably still interested.

10 The KPE project itself is clouded with more unknown issues today than it
11 was in 2000. The Kentucky Siting Board has rejected KPE's application based on
12 local zoning issues. KPE was given six months to correct this deficiency, and it is
13 unclear at this time whether KPE will be able to overcome this hurdle.

14 In addition, the Kentucky Division of Waste ruled that the project was
15 using exempt Refused Derived Fuel and did not require a permit. An
16 Administrative Law Judge ruled that the Division of Waste had misinterpreted its
17 regulations and that a permit, requiring local input, would be required. The
18 Cabinet Secretary overruled the Administrative Law Judge, and the case is now
19 under appeal in Franklin Circuit Court. The outcome of this issue and its impact
20 on the KPE project is unknown at this time.

21 There are also technical concerns that have been raised about the project.
22 EKPC commissioned a due diligence study with respect to the gasification
23 technology being used in the KPE project. While the study did not find any

1 reasons why the project will not work, it certainly did raise a number of issues
2 about the reliability of the gasifiers to be employed. While gasification of solid
3 fuels has been around since World War II and before, the gasification of a coal
4 and garbage mix is relatively new. The previously built gasifiers of this design in
5 Europe have very little runtime and raise a question about reliability and
6 availability. KPE representatives claim that if necessary, the gasifiers could run
7 on 100% coal, which has some track record. But since part of the economics of
8 the KPE project is the reliance on garbage tipping fees, the economic viability of
9 the project is unclear if coal or natural gas has to be purchased instead of deriving
10 income from taking garbage as a fuel.

11

12 Q10: WHAT ACTION DO YOU RECOMMEND THE COMMISSION TAKE IN
13 THIS CASE?

14 A10: There are really two questions before the Commission in this case. First, is the
15 original approval of the KPE contract given in 2000 still valid, and if it is not,
16 second, should the contract be re-approved at this time?

17 The KPE contract was approved based on the need for baseload capacity.
18 EKPC requested permission to construct the Gilbert plant to take the place of the
19 KPE contract. With approval of the Gilbert plant, the Commission held out the
20 possibility that if the KPE project proceeded before about one third of the cost of
21 the Gilbert plant had been expended, cancellation of the Gilbert project and
22 reliance on KPE might be more economical. The Gilbert plant has now passed
23 this point of no return and will be the unit to meet EKPC's current baseload need.

1 The justification for the Commission's original approval of the KPE contract is no
2 longer valid.

3
4 Q11: IF THE JUSTIFICATION FOR THE COMMISSION'S APPROVAL OF THE
5 KPE CONTRACT IS NO LONGER VALID, SHOULD THE COMMISSION
6 WITHDRAW ITS APPROVAL OF THE KPE CONTRACT IT APPROVED IN
7 2000?

8 A11: Withdrawal of the Commission's approval is not necessary. The Commission in
9 2000 approved a contract between EKPC and KPE that itself has become
10 unusable as a power purchase contract and thus invalid because of KPE failure to
11 met deadlines in the contract. While the two parties consider the contract to still
12 be in force, it is not a final contract that could be used to purchase power should
13 the KPE project actually get built. EKPC acknowledges that a new contract will
14 have to be negotiated and signed, if for no other reason than to correct the missed
15 deadlines that has rendered the Commission-approved contract invalid. But
16 EKPC has also stated that there are likely to be other changes made to the 2000
17 contract. The Commission's approval was for a contract that has since been
18 rendered unusable, and thus is now invalid, due to the failure of KPE to meet the
19 deadlines in the contract.

20 The Commission approved a specific contract in 2000. That contract is no
21 longer valid. While the Commission approved this specific contract, it did not
22 approve any or all contracts that might be negotiated in the future between EKPC
23 and KPE. Likewise, the Commission did not merely approve the concept of a

1 contract between these two parties, under which all future agreements would
2 automatically be approved. A specific contract was approved and only that
3 contract. And now that specific contract can no longer be used as a power
4 purchase agreement due to KPE's failure to meet the terms of the contract.
5

6 Q12: IF THE ORIGINAL CONTRACT APPROVED BY THE COMMISSION HAS
7 BEEN RENDERED INVALID BY KPE'S FAILURES, SHOULD THE
8 COMMISSION APPROVE A NEW KPE CONTRACT TO BE NEGOTIATED
9 IN THE FUTURE AT THIS TIME, BASED ON THE ABILITY TO SELL
10 SURPLUS POWER AS MR. EAMES DISCUSSED IN HIS TESTIMONY?

11 A12: While it is true that the KPE contract could replace the need for some future
12 combustion turbines, and excess power could most likely be sold off-system, now
13 is not the time for the Commission to approve a new KPE contract that still needs
14 to be negotiated sometime in the future.

15 Approval of a KPE power purchase contract is premature at this time.
16 First, EKPC does not have a contract to put before the Commission for approval.
17 EKPC has stated that the original contract will have to be renegotiated if it is to be
18 used. Even if EKPC had a renegotiated contract to present to the Commission in
19 this case, EKPC has not demonstrated a need for the KPE project at this time. In
20 addition, there are too many unanswered questions about the KPE project that
21 need to be settled before the Commission could approve a contract with KPE.
22

1 Q13: WHEN WOULD IT BE AN APPROPRIATE TIME FOR THE COMMISSION
2 TO CONSIDER APPROVING A NEW REVISED CONTRACT WITH KPE?

3 A13: The situation should be similar to when EKPC first brought the KPE contract to
4 the Commission for approval. When a contract is finalized and can be examined,
5 when a need for new capacity in a specific time frame is demonstrated, and when
6 the KPE project is again proven to be least-cost and is included in EKPC's
7 generation planning, the Commission could again consider the KPE contract. But
8 today, the KPE project is far from ready for approval, since regulatory approvals
9 are still needed, an on-line date is still to be determined, and a revised contract is
10 yet to be negotiated.

11 Though I have previously encouraged the Commission to give the KPE
12 project a chance to come to fruition, the situation today is so different that I
13 cannot continue to recommend that EKPC be tied to KPE. It would be
14 irresponsible for the Commission to approve a contract that is yet to be negotiated
15 for a project who's future is still quite uncertain. Current approval absent a
16 definite completion date forecloses other options that may arise and be as or more
17 attractive to EKPC. Approval at this time complicates EKPC planning process by
18 placing this cloud of uncertainty over future generation decisions. When KPE
19 receives its necessary regulatory permits, when a new contract is negotiated and
20 signed, and when EKPC can come before the Commission and demonstrate that
21 new capacity must be added by a specific date, KPE contract approval can be
22 sought from the Commission, but not before.

23


- 1 Q14: DOES THIS CONCLUDE YOUR TESTIMONY?
- 2 A14: Yes it does.

I, David H. Brown Kinloch, certify that the statements contained in the foregoing testimony are true and correct to the best of my knowledge, information, and belief.

Dated this 8th day of August, 2003.


David H. Brown Kinloch

Affirmed to and subscribed
before me, this 8th day
of August, 2003.


Notary Public

My Commission Expires: 6/23/2005